IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4942 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VARDHMAN SHWTAMBAR JAIN SANGH THRO.TRUSTEE

Versus

CHOKSHI PARK CO OP HOUSING SOCIETY LTD.

Appearance:

1. Special Civil Application No. 4942 of 2004

MR PC MASTER for Petitioner No. 1

MR PANKAJ K SONI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 08/07/2004

ORAL JUDGEMENT

1. Rule. Mr.Soni, learned Counsel for the respondent, waives service of notice of rule. With the

consent of the parties the matter is taken up for final hearing today.

2. The petitioner has approached to this Court challenging the legality and validity of the order dated 6-3-2004 passed by the Gujarat State Co.op. Tribunal below Stay Application in Revision Application No.84/2004, whereby injunction has been granted for directing the Society to put main gate on southern side and the Tribunal has further passed an order injuncting the visitors who come for "Darshan" to the temple from parking the vehicles and from causing any hindrance or nuisance to the Society and its members.

3. Upon hearing Mr.Master, learned Counsel for the petitioner and Mr.Soni, learned Counsel for the respondent Society, it appears that initially there were a disputes on certain aspects including the point as to what will be the size of window gate in case if the window gate is to be provided in front of the idol of the Jain Temple. Ultimately the learned Counsel appearing for both the sides have agreed under the instructions of their clients as under:

3.1 The petitioner shall construct the main gate on southern side of the temple namely; Vejalpur Road for the purpose of entry of all the vehicle of the visitors to the temple;

3.2 The petitioner shall be at the liberty to put window gate having internal width of four feet in front side of the idol. However, such window gate shall be exclusively used for/by the pedestrian visitors and no person with any vehicle shall be allowed to enter through window gate;

3.3 The petitioner shall see to it that any visitor who is desirous to visit temple with any vehicle, may be scooter, motor cycle, car etc., shall enter through the main gate which is to be constructed on Vejalpur Road;

3.4 The petitioner shall also ensure that no visitors to the temple are allowed to park any vehicle of any type, scooter, motor cycle, car etc., on the internal road of the society over which the window gate is to be fixed and there shall also not be any parking on the main entry of the society of any vehicle of the visitors who may come for "Darshan";

3.5 The petitioner will be at the liberty to complete the construction of main gate and window gate as referred to hereinabove within a period of four months from today.

4. In view of the aforesaid consensus arrived at between the learned Counsel appearing on behalf of their respective clients and as the matter is pertaining to use and utilization of temple in such a manner which may not cause inconvenience to the members of the society, I find that if the aforesaid understanding and the agreement recorded hereinabove is allowed to operate in place of the injunction granted by the Tribunal, the same would take interest of all concerned including the petitioner and the respondent society and its members.

5. The learned Counsel appearing for respondent Society, Mr.Soni states that in view of the aforesaid substitution of the injunction order passed by this Court, necessary declaration shall also be made in the proceedings of the Revision before the Tribunal as well as in the Suit proceedings to dispose of the concerned proceedings accordingly in terms of the order passed by this Court.

6. In view of the above, the impugned order passed by the Tribunal shall stand substituted and modified in terms of the agreement as peer the conditions No.3.1 to 3.5 recorded hereinabove and the petition shall stand allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

8-7-2004 (Jayant Patel, J.)

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